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Negotiations 102

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37th Annual National Conference

**“Renewal and Reinvestment in Higher Education:
Implications for Academic Collective Bargaining”**

**National Center for the Study of Collective Bargaining
In Higher Education and the Professions
April 11, 12, 13, 2010
Baruch College Conference Center
City University of New York**

2010: Negotiations 102:

**A Further Introduction To the Art of
Negotiations and Collective Bargaining**

**[With emphasis on the Skills and Concepts
Needed to Bargain Successfully]**

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THE ESSENCE OF COLLECTIVE BARGAINING

Finite resources [usually money, but not always]

Ultimate Power [ability to act]

**How much of the resources and power will
the union gain?**

Balanced by

**How much of the resources and power
management must give up?**

NATIONAL LABOR RELATIONS ACT
29 U.S.C. Sec. Sec. 151-169 (printed above)

TITLE II

[Title 29, Chapter 7, Subchapter III, United States Code]
Conciliation of labor disputes in Industries affecting Commerce;
National Emergencies

Sec. 1. [Declaration of purpose and policy] It is the policy of the United States that (a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interest of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees [.]

Sec. 8. (d) [Obligation to bargain collectively] For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession [.]

2010 Negotiations 102:
A Further Introduction To the Art of Negotiations
And Collective Bargaining

{With Emphasis on the Skills and Concepts
Needed to Bargain Successfully

This workshop is intended for people who are involved with collective bargaining on their campus or for their union. Although the following Agenda may appear fixed in stone, it is merely an outline. We hope that the class will develop along the lines of a 'give and take' dialogue. You are encouraged to disagree, or ask questions at any point in the process.

Agenda

Introductions: Presenters and Participants

1. Fisher's Rules
BATNA
ZOPA
2. Practical Rules to Remember and Use
3. Listening, Watching, and Being Watched Skills
4. Relationships, Trust, and Credibility
5. Adjunct Bargaining – Special Considerations
6. Reduction of Agreements to Writing
7. Standards Used By Arbitrators
8. Is it a Good Agreement?

Attachment: Bibliography

[Many of these one-liners appear contradictory. They emphasize the ambiguities involved in the negotiation of a collective bargaining agreement. They also emphasize the dual posture negotiators must take; on the one hand always working on the relationship, and on the other hand maintaining a 'defensive crouch.']

Practical Rules to Remember and Use

Never face a window.

Play by the rules—what rules? The ones you have agreed on

Don't ask – Don't Get!

Leave you Ego at home.

Be a good listener, but ask a lot of questions.

Concentrate on the issues, not on people or personalities.

You can't make someone agree to something that he thinks will hurt him.

Believe only what you see and what you can verify.

State your position clearly, directly, succinctly

Stick to two or three of your strongest points (avoid dilution)

The other side will only focus on your weaker ones.

Keep your best arguments for the beginning or the end [not the middle]

Listeners remember the end best.

Give bad news first and positive news last

If you disagree first state reasons then say 'I disagree.'

Why? They are more apt to hear your reasons.

Never meet for the sake of meeting.

Put issues in terms of shared values

Clarify and restate constantly

Educate the other team [don't preach]

Acting dumb is OK.

Ask for more than you expect to get.

Never, never, never show a reaction.

Watch faces and body language, particularly the faces and body language of people who are not speaking.

Deflect anger with "I know how you feel/felt."

Never argue.

Helpful to have an 'higher authority' you have to answer to. Keep it vague.

Try to put the other side in the position of offering a counter or a compromise.

If forced to make a concession, always ask for something in return.

Be comfortable saying "No."

["No," by the way, is just an opening offer.]

Use the positive more than the negative

If faced with an ultimatum – test it, or ignore it.

[You can even yawn.]

Understand your tolerance for stress – and don't reach your limit.

Standards Applied by Arbitrators

[Arbitrators do not rule on the basis of what they think is fair or reasonable. The arbitrator looks to the language, and the context of the language, to determine what the words of the contract mean in relation to the facts presented during the hearing. The criteria are listed here in just about rank order of importance.]

Inside the Agreement

Clear and unambiguous

Normal and technical language is accepted.

To express one thing is to exclude another.

Is there a consistent meaning throughout the Agreement?

Words will be judged by their context.

[Understand that the further away from 'clear and unambiguous' you get the weaker your case]

The Agreement is to be construed as a whole.

Beyond the Agreement

Intent of the Parties

Both parties must be shown to have consciously and knowingly accepted the practice.

History of the negotiations

It must be of sufficient duration.

Changes in language signal an intention of change the original meaning.

[Requires an overwhelming weight of evidence.]

No consideration will be given to compromise offers.

Consideration will be given to the custom and practice of the parties.

[No practice will be considered if the language in question is 'clear and unambiguous']

Practices must be 'mutual'

Some Special Considerations

Interpretation in light of the law.

Reason and equity.

Avoidance of harsh or absurd results.

Experience and training of the negotiators

Interpretation against the party writing the language

Was there a 'meeting of the minds?'

ANTHONY D. WILDMAN is the Director of Higher Education Services at New York State United Teachers. Previously, he was president and negotiator for a small faculty local, a labor relations specialist for NYSUT, and served as Director of Staff and Chief Negotiations Consultant at United University Professions.

Tony has worked with NYSUT's national affiliate, the American Federation of Teachers, on a number of training and negotiations projects in Kenya, California, Missouri, West Virginia, New Jersey, Florida at Miami Dade Community College and with the university systems in Alaska. He was Co-Chief Negotiator for the Public Employees Federation, New York State's largest state employee union. Recently, Tony acted as chief negotiator for the initial contract of the Kansas Organization of State Employees (KOSE), a joint affiliate of AFT and American Federation of State County, Municipal Employees (AFSCME)

Tony's holds degrees in History and has studied in Europe researching the poetry of World War I. He has also studied collective bargaining with Roger Fischer and mediation with Frank Sandner at Harvard University. In addition to history, Tony teaches collective bargaining, mediation, arbitration, and alternate dispute resolution. He is a member of the American Association of University Professors.

Tony has received the Higher Education Staff Award from the American Federation of Teachers for "30 years of dedication and commitment to collective bargaining and labor relations in higher education."

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2010 Bibliography

'How-to' Negotiate:

Like trying to learn to swim on the kitchen table, 'how-to' books can leave much to be desired. You might learn the strokes—crawl, backstroke, and butterfly – but never had the experience of trying to breathe once the water hits your face. Nonetheless, here are some good ones, and ones that will make a lot more sense after you have had one go at negotiations.

Academic Collective Bargaining, edited by Ernst Benjamin and Michael Mauer. Modern Language Association of America, 2006. Benjamin, the former General Secretary and Director of Research at American Association of University Professors, and Mauer, the current Director of Organizing at AAUP, present a series of essays describing collective bargaining in the higher ed setting.

Cohen, Herb. **Negotiate This: By Caring, But Not T-H-A-T Much**. Warner Business Books, 2003. Cohen is a New Yorker through and through, and that brand of humor comes out; so does his common sense approach to negotiations.

Colosi, Thomas R. **On and Off the Record: Colosi on Negotiation**. Kendall/Hunt Publishing Company, 1993. Tom Colosi is a former Vice President of the American Arbitration Association. These two books are practical 'how-to' descriptions of the negotiation process

Colosi, Thomas R. and Arthur Eliot Berkeley. **Collective Bargaining: How it Works and Why**, 2nd Edition. American Arbitration Association, 1994.

Dawson, Roger. **Secrets of Power Negotiating: Inside Secrets from a Master Negotiator**, 2nd Edition. Career Press, 2001. Despite the modest subtitle, Dawson's book isn't half bad. Dawson is a proponent of the 'hard-ball' school, and as such is an effective alternative to Fisher.

Fisher, Roger and William Ury. **Getting to Yes: Negotiating Agreement Without Giving In**, 2nd Edition. Penguin Books, 1991. Roger Fisher, the Director of the Harvard Negotiation Project, practically invented the 'soft-sell' of negotiations. His proscriptions for 'getting to yes,' form a practical and very effective mind-set for the whole process.

Fisher, Roger and William Ury. Getting Past No. Bantam Books, 1993.

Fisher, Roger and Scott Brown. Getting Together: Building Relationship that gets to Yes. Houghton Mifflin Company, 1988.

Fisher, Roger and Elizabeth Kopelman & Andrea Kupfer Schneider. Beyond Machiavelli: Tools for Coping with Conflict. Harvard University Press, 1994.

Fisher, Roger and Daniel Shapiro. Beyond Reason: Using Emotions as You Negotiate. Viking, 2005.

Harvard Business Essentials. Negotiations. Harvard Business School Press, 2003. *This little book is filled with terse, cogent, and useful information and approaches to negotiations.*

Harvard Business Review on Negotiation and Conflict Resolution. The Harvard Business Review Paperback, 2000. *This is a series of essays, some helpful and some not so, dealing with business negotiations and in-house conflict resolution.*

Latz, Martin E. Gain the Edge! Negotiating To Get What You Want. St. Martin's Griffin, 2004. *This is 'hardball' stuff: Tools and tactics to get ahead of your opponent and keep ahead.*

Nierenberg, Juliet and Irene S. Ross. Women and the Art of Negotiating. Barnes and Noble, 1985. *Juliet Nierenberg discusses how women view the problems and perils of negotiating in a macho world. Perhaps less useful now that a quarter of a century of change has passed, but interesting and useful nonetheless.*

Raiffa, Howard. Negotiation Analysis: The Science and Art of Collaborative Decision Making. The Belknap Press of Harvard University Press., 2002. *For those who like 'tomes,' Raiffa's book is perfection. Filled with complex formulae, force arrows and diagrams, the sub-title of the book alone is worth the price. Nonetheless, the chapters are filled with a minutely detailed look at all aspects of negotiations. Not for the weak of spirit, however.*

Shell, G. Richard. Bargaining for Advantage: Negotiation Strategies for Reasonable People. Penguin Books, 1999. *Shell is the Director of the Wharton Executive Negotiation Workshop. This is a very thoughtful book, and if you must start somewhere start with Shell.*

Willing Negotiations That Preserve Relationships. [Results Driven Manager Series.] Harvard Business School Press, 2004. *A series of case studies of negotiations situations.*

Resolving Conflict:

Here we emphasize some of the individual components of the negotiations process.

Bolton, Robert. People Skills: How to Assert Yourself, Listen to Others and Resolve Conflicts. A Touchstone Book, 1979. *Bolton's book is about communicating, something we all need help with from time to time.*

Covey, Stephen M. R., with Rebecca R. Merrill. The Speed of Trust: The One Thing That Changes Everything. Free Press, 2006. *A bit hokey – and you just know that he is going around the country doing workshops for big fees – the Covey book nevertheless presents a lot of thought-provoking ideas about the nature of trust.*

Fink, Steven. Crisis Management: Planning for the Inevitable. American Management Association, 1986. *Fink analyzes crisis situations and how to manage communications and decision making during a crisis.*

Goodman, Allan H. Basic Skills for the New Mediator, 2nd Edition. Solomon Publications, 2005. *Goodman is a Judge on the U.S. General Services Administration Board of Contract Appeals. This pithy book, with one- and two-paragraph answers to a series of questions, gives you a good idea of what a mediator looks for and how one operates.*

Greene, Robert. The 48 Laws of Power. Penguin Books, 2000. *A hardball look at getting, holding, and using power. Not for the squeamish!*

Kheel, Theodore W. The Keys to Conflict Resolution, 2nd Edition. Four Walls Eight Windows, 2001. *Ted Kheel was a fixture on the New York City scene as a third-party neutral working out settlements between the city and its unions. This book is directed at neutrals, but contains a lot of wisdom for negotiators, too.*

Leadership:

Leadership is the art of influencing people to do things they might not otherwise do in achieving desired goals. Here are four small books packed with the values and principles of leadership.

Alinsky, Saul. Rules For Radicals: A Pragmatic Primer for Realistic Radicals. Vintage Books, 1971. *Alinsky is, well – Alinsky. But this book, now more almost forty years old, is filled with real wisdom, gumption, and guts.*

Gordon, Dr. Thomas. Leader Effectiveness Training: Proven Skills for Leading Today's Business into Tomorrow. A Perigee Book, 2001. *Gordon, founder of a big business human relations training organization, discuss management skills for dealing with conflict, and decision making.*

Harvey, Jerry B. The Abilene Paradox and Other Meditations on Management. Jossey-Bass, 1988. *Harvey's Abilene Paradox story is a classic, a study in group dysfunctional behavior, and how to – hopefully – avoid such mistakes.*

Phillips, Donald T. Martin Luther King, Jr. On Leadership: Inspiration & Wisdom For Challenging Times. Warner Business Books, 1999. *Obviously, negotiations is way too trivial a subject when compared with Dr. King's struggles, but this little collection of his thoughts makes for powerful and sensible reading.*

Ideas, Words, Grammar, Body Language:

The careful and proper use of words, words, words is the basis of enforceable contract language. Here are some books that will help you think about words and their meaning.

Fairhurst, Gail T. and Robert A. Sarr. The Art of Framing: Managing the Language of Leadership. Jossey-Bass, Inc., 1996.

Lakoff, George and Mark Johnson. Metaphors We Live By. University of Chicago Press, 1983. *Lakoff, a Professor at the University of California and Director of the Rockridge Foundation. Rockridge is a liberal think-tank. The first half of this little book describes how to 'frame' your arguments for the most effect. The Rockridge Foundation's web-site is <http://www.rockridgeinstitute.org>*

Lakoff, George. Don't think of an elephant: Know Your Values and Frame the Debate. Chelsea Green Publishing, 2004.

Luntz, Frank. Words That Work: It's Not What You Say, It's What People Hear. Hyperion, 2007. *Lutz is the mirror image of Lakoff as a conservative wordsmith. Lutz's forte is finding the exact words and phrases to evoke an emotional, but positive, response. Luntz is the senior staff member of Luntz, Maslansky Strategic Research and their web-site is <http://www.luntz.com/>*

Pease, Allan and Barbara. The Definitive Book of Body Language. Bantam Books, 2004. *The problem with reading this book is that you will become so self-conscious of your own body language that you might become unable to function.*

Ross-Arson, Bruce. Edit Yourself: A Manual For Everyone Who Works With Words. W.W. Norton & Company, 1982. *This isn't the only grammar book, but you should arm yourself with one you like, and review it every once and a while.*

Technical books

For want of a better term I call these books 'technical.' They are large heavy books, and are updated regularly. Like books of this kind, they are frequently called by their author[s]' names.

Basic Patterns in Union Contracts, 14th Edition. The Bureau of National Affairs, Inc., 1995.

Developing Labor Law, with Supplements, John T. Neighbours, Christopher T. Hexter, and John E. Higgins, Jr., Editors in Chief. Committee on the Development of the Law Under the National Labor Relations Act, American Bar Association Section of Labor and Employment Law. Bureau of National Affairs, Inc., 1998.

Elkouri & Elkouri, How Arbitration Works, Sixth Edition, Alan Miles Ruben, Editor in Chief. Committee on ADR in Labor and Employment Law, American Bar Association Section of Labor and Employment Law. Bureau of National Affairs, Inc., 2003. *In 1952 Frank and Edna Elkouri wrote the first edition of this classic text. It is the relied on by everyone as almost the definitive word on arbitration in the workplace.*

How to Take a Case Before the NLRB, Eighth Edition, Fredric H. Fischer, Brent Garren, and John C. Truesdale, Editors in Chief. Committee on the Practice and Procedure under the NLRA, Section of Labor and Employment Law, American Bar Association. BNA Books, 2008.

Labor Union Law and Regulation, and periodical Supplements, William W. Osbourne, Jr., Editor in Chief. ABA Section of Labor and Employment Law. Bureau of National Affairs, 2003. *This book explores intra-union dynamics, the relationship of unions with its members and with nonmember employees.*

Public Sector Labor and Employment Law, Third Edition, Jerome Lefkowitz, Jean Doerr, and Sharon Berlin, Editors in Chief. New York State Bar Association, 2008. *This is an example of an examination of the laws and regulations in a single state. It happens to be New York, but your state will probably have a similar study describing the state's labor laws.*

2008 Source Book on Collective Bargaining: Wages, Benefits, and Other Contractual Issues. The Bureau of National Affairs, 2008. *Published almost annually by BNA, this Sourcebook compiles recent data, information, and comment on collective bargaining.*

The Airport Book Store

If you spend a lot of time in airports you have spent a lot of time in airport book stores. At the risk of being laughed at take a look at a little series called “Essential Managers,” published by Dorling Kindersley [<http://www.dk.com>]. The little books are around 70 pages each, printed in China, and – I think –written in Great Britain. Here are five:

Achieving Excellence, by Robert Heller
Managing Meetings, by Tim Hindle.
Managing Teams, by Robert Heller
Negotiating Skills, by Tim Hindle.
Strategic Thinking, by Andy Bruce & Ken Langdon.

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